

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of the City of Rancho Cordova to
construct new temporary crossing
improvements over the Mather Field Spur at
three locations

A1610010

**UNION PACIFIC RAILROAD COMPANY'S PROTEST TO THE CITY OF RANCHO
CORDOVA'S REQUEST FOR THREE NEW GRADE CROSSINGS**

I. Request for Hearing.

Union Pacific Railroad Company ("UPRR") lodges this protest pursuant to the Commission's Rules of Practice and Procedure, Rule 2.6. UPRR agrees that this matter should be categorized as ratesetting.

Union Pacific opposes construction of the crossings and requests a hearing. Given the nature and scope of issues, a hearing date one year from the filing date is appropriate. UPRR will be prepared to discuss a reasonable schedule for discovery and other matters at the pre-hearing conference.

UPRR consents to email service. Notices to UPRR should be addressed to counsel as follows:

David M. Pickett
Senior General Attorney
Union Pacific Railroad Company
10031 Foothills Boulevard, Suite 200
Roseville, CA 95747
Telephone: (916) 789-6400
Facsimile: (916) 789-6227
E-Mail: dmpickett@up.com

UPRR asks for all documents served on it also to be delivered to the following UPRR representative on an "Information Only" basis:

Kevin Yoder
Manager of Industry & Public Projects
Union Pacific Railroad Company
9451 Atkinson Street
Roseville, CA 95747
Telephone: (916) 789-5152
E-Mail: kayoder@up.com

II. Defects in Service.

The city's proof of service asserts that the city served UPRR by mail and by personal delivery on October 12, 2016. The proof of service does not identify an address where it served UPRR by mail or the name or address of a UPRR representative who received it by personal delivery. UPRR has an agent for service of process registered with the California Secretary of State. That agent's information is available on the Secretary of State's website. Absent stipulation, the only legally effective method of serving a corporation such as UPRR is through its agent for service of process. The city's proof of service does not acknowledge UPRR's agent for service of process or suggest that the city served the application through the agent for service of process. UPRR learned of the city's application only through informal contact with a member of the Commission's staff.

The railroad contends that the city did not comply with the Commission's requirements for giving service. In an effort to respect efficiency for all involved, however, UPRR files this protest without requiring the city to provide valid service of the application.

UPRR believes that its protest is timely because it has been filed within 30 days of the date that the notice of the application first appeared in the Commission's daily calendar. (Rules of Practice and Procedure, Rule 2.6(a).) According to UPRR's review,

the notice first appeared on October 20, 2016. To the extent that UPRR's protest is untimely or has any other procedural defects, UPRR reserves its right to dispute the validity of the city's service of the application. UPRR also reserves its rights with respect to the city's service of any future documents in this proceeding.

III. Grounds for Protest.

The city's application omits or obscures critical information about its plans and the property where it proposes to construct a bicycle path.

The Placerville Branch is a railroad right of way that runs generally east/west between Sacramento and Placerville. In 1996, UPRR's predecessor-in-interest, Southern Pacific Transportation Company ("SPTC"), sold this branch line to the Sacramento-Placerville Transportation Corridor Joint Powers Authority (the "JPA"). In that transaction, SPTC reserved a perpetual and exclusive easement for providing freight rail service on the line for the benefit of current and future customers. The parties also executed a shared use agreement that describes the rights and duties of each party with respect to maintenance and use of tracks and the construction of future projects.

The city proposes to build a portion of its path on a significant spur line that accesses Mather Field. Mather Field is a former Air Force base that is now available for potential commercial development. UPRR serves customers on the north end of the spur and holds open the rest of the spur to be available for serving potential future customers that could locate at Mather Field.

Communication about the city's plans for a bicycle path has been poor. Both the city and the JPA have proceeded as though they have greater rights than they have and as though UPRR has fewer rights than it has. An example of the communication problems and the profound differences in opinion about each party's legal rights are reflected in a recent exchange of letters. The JPA sent the city a letter dated August 5,

2016. The purpose of the letter was to express the JPA's opinion that UPRR's rights would not be unreasonably impacted by the project and to assure the city that UPRR does not have the right to stop the project. (Exhibit A, JPA letter dated 08/05/16.) UPRR responded by letter dated September 26, 2016. UPRR refuted the JPA's assertions and described specific legal and design flaws with the proposal. (Exhibit B, UPRR letter dated 09/26/16.) The city's present application to construct the crossings was the next communication UPRR received about the path from either the city or the JPA.

The city and JPA both point to the fact that UPRR does not currently serve customers on most of the spur as the reason they believe UPRR's rights will not be unreasonably affected by this project. UPRR disputes this assertion and the ability of any party other than UPRR to make such conclusions about the utility of facilities on which it has the right to operate.

Of particular note, the city's plans call for paving over the tracks along the entire length of a railroad bridge that crosses Highway 50. The effect would be to both visually and in fact sever the distant portion of the spur on which the bridge is located. With the trail in place, Mather Field cannot be marketed as a site served by rail. It is not reasonable for the city to promise to remove public improvements like this in the future if UPRR ever wishes to access customers at Mather Field, and it is not reasonable to expect UPRR to rely upon such representations.

Under the facts currently known by UPRR, it asserts the following grounds for protesting the city's application:

1. The city lacks the property rights necessary to construct a bicycle path on this railroad right of way. The Commission cannot grant a party the right to construct a crossing on property that the party does not own or control. The Commission lacks the jurisdiction to adjudicate the property rights of the parties.

2. Neither the deed for the property sale nor the shared use agreement authorizes the JPA to grant the city permission to build a bicycle path on this right of way. The Commission lacks the jurisdiction to adjudicate the contractual and property rights of the parties.

3. The proposed project would unreasonably interfere with UPRR's freight operating easement and other rights under the deed and shared use agreement. The Commission lacks the jurisdiction to adjudicate the contractual and property rights of the parties.

4. The city cannot meet its burden of overcoming the presumption that a new crossing must be grade-separated.

5. The city's designs for the crossings are unreasonable and conflict with industry and Commission standards.

UPRR reserves the right to supplement these grounds for protesting the city's application as the railroad's investigation continues and the case proceeds to a hearing.

DATED: November 17, 2016

/s/ David M. Pickett
DAVID M. PICKETT
Attorney for Union Pacific Railroad Company
Union Pacific Railroad Company – Law Dept.
10031 Foothills Boulevard, Suite 200
Roseville, CA 95747
Telephone: (916) 789-6400
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EXHIBIT A

SACRAMENTO-PLACERVILLE TRANSPORTATION CORRIDOR JOINT POWERS AUTHORITY

Member Agencies: City of Folsom / County of El Dorado / County of Sacramento / Regional Transit

August 5, 2016

Chris Boyer
City of Rancho Cordova
2729 Prospect Drive
Rancho Cordova, CA 95670

RE: Mather Rails to Trails Project

Dear Chris,

This is to respond to your concern that the Union Pacific Railroad (UPRR) has expressed opposition to the City of Ranch Cordova (CRC) proceeding with its Mather Rails to Trails Project. While the UPRR has rights to provide freight service on the Mather Spur tracks, we do not believe UPRR has rights to stop this project, based on the following:

1. The Sacramento-Placerville Transportation Corridor Joint Powers Authority (SPTC-JPA) is the owner of the Placerville Branch railroad, including all spur tracks, based on its purchase in 1996. The UPRR is allowed to provide freight service on the Placerville Branch in accordance with the Shared Use Agreement – Placerville Branch (SUA), executed between the SPTC-JPA and (now) UPRR, also in 1996.
2. Section 2.3 of the SUA clearly states that the SPTC-JPA owns all trackage in the Placerville Branch.
3. Section 2.1(b) of the SUA specifies that the SPTC-JPA has the right to use the trackage in the freight rail easement for any project, on condition that such use is coordinated with UPRR and does not unreasonably interfere with the provision of its freight service. The SPTC-JPA's use is further subject to Sections 7.1 and 7.2 regarding project design review and approvals.
4. It is our understanding that CRC has complied with Sections 7.1 and 7.2 in that UPRR has been included entirely in the design review process. The project design does not unreasonably restrict UPRR's ability to provide service on the portion that currently has freight service. Further, we do not believe that the project would unreasonably interfere with future use of the portion that currently does not have freight service, as CRC has agreed to remove the trail if UPRR re-establishes freight service to Mather Field businesses.

SACRAMENTO-PLACERVILLE TRANSPORTATION CORRIDOR JOINT POWERS AUTHORITY

Member Agencies: City of Folsom / County of El Dorado / County of Sacramento / Regional Transit

The SPTC-JPA and its member agency Regional Transit (RT) have no objection to CRC's continued construction of the project under the terms and conditions set out in the License agreement for Pedestrian Walkway and Bicycle Path (Mather Spur), as amended. The CRC should give UPRR Project Notice, in accordance with Section 1.27 of the SUA, and provide a copy of the final Plans to UPRR, pursuant to Section 7.2(b).

Sincerely,



John C. Segerdell
CEO; SPTC-JPA

Copy: Paul Chrisman – SPTC-JPA
John Darragh – Regional Transit

EXHIBIT B



BUILDING AMERICA®

September 26, 2016

Chris Boyer
Public Works Department
City of Rancho Cordova
2729 Prospect Drive
Rancho Cordova, CA 95670

John C. Segerdell
Chief Executive Officer
SPTC-JPA
1329 Howe Avenue, Suite 110
Sacramento, CA 95825

Re: Rancho Cordova Trail Project

Dear Mr. Boyer and Mr. Segerdell:

I write in response to Mr. Segerdell's August 5, 2016 letter to Mr. Boyer regarding Union Pacific's rights related to the City of Rancho Cordova's proposal to construct a trail over Union Pacific's freight operating easement on a portion of the Placerville Branch. Union Pacific does not concur with the project or with the Sacramento-Placerville Transportation Joint Powers Authority's (JPA) analysis of the parties' rights under the 1996 shared use agreement.

Contrary to the August 5 letter, Union Pacific has not been "included entirely in the design review process." Instead, the railroad has been poorly informed about the project and its comments have not been taken into account as plans have continued to progress. Part of the problem appears to be a fundamental difference in how the parties view the nature and utility of the spur track that the city wishes to partially pave over. Although the track is not currently used to serve customers south of Highway 50, Union Pacific has not abandoned its use of this line for freight rail service. This spur is a vital link for potential rail service to future customers who may locate at or near Mather Field. Union Pacific acknowledges the city's offer to remove the trail if the right of way is needed for future rail service, but experience shows that once property is put to use as a public trail it is often difficult or impossible to recover the corridor for rail purposes. For these reasons, Union Pacific will not support a plan that reduces the current utility and availability of the line for freight rail purposes.


Chris Boyer
City of Rancho Cordova
John C. Segerdell
SPTC-JPA
September 26, 2016
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Union Pacific also objects to the creation of new grade crossings over the track. The city's current plans call for three new grade crossings, all of which would traverse the tracks at shallow angles. Public policy discourages the creation of new grade crossings for safety reasons. The design features of these crossings would present especially clear and unreasonable safety risks in the event rail service resumes.

Union Pacific also notes that the JPA lacks the authority to give a third party that is not a member agency permission to build a project of this kind on the right of way in the first place.

I am available as a point of contact if either the JPB or the city wishes to discuss these issues further.

Sincerely,

A handwritten signature in dark ink, appearing to read "David M. Pickett", written in a cursive style.

DAVID M. PICKETT

DMP/jlg
cc: David Stewart, CPUC (via email only)